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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERTRAM L. CLARKE,
Plaintiff,

v.

R. JAMES "JIM" NICHOLSON,
SECRETARY OF VETERANS AFFAIRS,
Defendant.

No. 2:05-CV-00121-GEB-KJM

STIPULATION PURSUANT TO THE
PRIVACY ACT AND HIPPA;
PROTECTIVE ORDER¹

Plaintiff and Defendant, through their attorneys, stipulate as follows:

1. Plaintiff filed this employment discrimination suit pursuant to Title VII, 42 U.S.C. § 2000 et seq., alleging discrimination and retaliation.

2. Pursuant to the rules of discovery, including the automatic disclosures required by Fed.R.Civ.P.26, Defendant may be required to produce personal information about other federal employees, both current and former, and about third parties, who are

¹ The parties' stipulation has been modified slightly by the court, as set forth in the order below.

1 not parties to this lawsuit. The parties acknowledge that such
2 personal information may be relevant to the issues raised in
3 Plaintiff's complaint.

4 3. The information requested is arguably protected from
5 disclosure by the Privacy Act, and by HIPAA (Title 45 of the Code of
6 Federal Regulations, Section 164.508). The Privacy Act, 5 U.S.C. §
7 552a, prohibits any federal agency from

8 disclos[ing] any record which is contained in a system of
9 records by any means of communication to any person, or to
10 another agency, except pursuant to a written request by,
or with the prior written consent of, the individual to
whom the record pertains. . . .

11 5 U.S.C. § 552a(b).

12 4. Pursuant to § 552a(b)(11), the parties stipulate to the
13 entry of a court order allowing the disclosure and use of documents
14 which are required to be disclosed, as set forth above.

15 5. The parties further agree to the following provisions of a
16 protective order. The following provisions apply to all personal
17 information about third parties and other federal employees
18 contained in the documents produced by Defendant:

19 a. Plaintiff and his agents and representatives shall
20 not disclose any personal information about third parties to any
21 other persons where such disclosure is not reasonably necessary to
22 the conduct of this litigation.

23 b. Plaintiff shall only use the information for matters
24 reasonably related to the conduct of this litigation, and not for
25 any other purpose.

26 c. If any of the documents disclosed pursuant to this
27 stipulation are marked as exhibits during depositions or attached to
28 pleadings filing with the Court, the documents shall be properly

1 redacted to remove any personal information of a sensitive nature,
2 including but not limited to the following information: home
3 addresses, home telephone numbers and social security numbers.

4 WHEREFORE, the parties seek an order of this Court directing
5 Defendant to release to Plaintiff all documents that are subject to
6 release under the rules of discovery, and directing Plaintiff and
7 Plaintiff's counsel to protect the documents from disclosure as set
8 out in paragraph 5 above.

9 DATED: February 23, 2006 MCGREGOR W. SCOTT
10 United States Attorney

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12 By: /s/John F. Gisla
13 JOHN F. GISLA
14 Assistant United States Attorney
15 Attorneys for the United States

16 DATED: February 22, 2006 /s/George R. Kucera
17 GEORGE R. KUCERA
18 Attorney For Plaintiff
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PROTECTIVE ORDER

For good cause, and pursuant to the terms of the foregoing Stipulation, Defendant is ordered to produce to Plaintiff all documents that are subject to the rules of discovery. Pursuant to F.R.Civ.P. 26(c), Plaintiff and Plaintiff's counsel are ordered to comply with the non-disclosure and confidentiality provisions set forth in paragraph 5 of the stipulation. Additionally, at the close of litigation, Plaintiff and Plaintiff's counsel shall either destroy the records covered by this protective order or return them to Defendant. See 45 C.F.R. § 164.512.

DATED: March 10, 2006.


UNITED STATES MAGISTRATE JUDGE